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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,571	07/24/2001	William A. Pugh	41017.P004X	5944
25943	7590	04/19/2005	EXAMINER	
SCHWABE, WILLIAMSON & WYATT, P.C. PACWEST CENTER, SUITES 1600-1900 1211 SW FIFTH AVENUE PORTLAND, OR 97204			NGUYEN BA, HOANG VU A	
		ART UNIT	PAPER NUMBER	
		2192		

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/912,571	PUGH ET AL.
	Examiner	Art Unit
	Hoang-Vu A. Nguyen-Ba	2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 November 2004.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-24 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 08 November 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

1. This action is responsive to the amendment filed November 8, 2004.
2. Claims 1-24 remain pending. Claims 1, 8, 14, 19 and 22 are independent claims.

### ***Response to Amendments***

3. Per Applicants' request, claims 1, 3-8, 10-14, 16-19 and 21-24 have been amended.
4. In view of Applicants' amendment to the drawings to correct a typographical error in Figure 1, the objection to the drawings is withdrawn.
5. In view of Applicants' amendment to the title of the invention to make it more descriptive, the objection to the title is withdrawn.
6. The objection to the specification is however maintained because in lines 14-15 of page 12, the term "practally" is mistyped.
7. In view of Applicants' amendments to claims 3-7, 10-13, 16 and 21 to correct identified minor informalities, the objection to these claims is withdrawn.
8. In view of Applicants's amendments to claims 9-13, 17, 23 and 24 to correct lack of sufficient antecedent basis of identified terms in claims 9-13 and to clarify the claim language of claims 17, 23 and 24, the rejection of these claims under 35 U.S.C. § 112, second paragraph is hereby withdrawn.

### ***Response to Arguments***

9. The rejection of claims 1, 8, 14, 19 and 22 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention is however maintained for the following reasons:

while the Examiner agrees with Applicants that they are entitled to claim all embodiments regardless of who initiated the request or how the request is communicated from the first update service of the first version to the second update service of the second version and any variety of approaches with or without the involvement of the dispatcher and/or other third parties may be used to relay the request to the second update service (see Remarks filed November 8, 2004, pages 34-39), the Examiner respectfully notes that the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant.

In this instance, since it is not clear, precise and unambiguous as to 1) how the first update service is related to the second updated service, or 2) whether the first update service is a distinct module/device from the second and the first service, or 3) whether the first update service is to only receive a request for update and the second update service is to only update the runtime library software module, the claims are considered indefinite – i.e., the scope of the claims is not clear to a hypothetical person possessing the ordinary level of skill in the pertinent art.

For art rejection purposes, the first and second update services are considered to be parts of one general update service.

10. With respect to claims 1, 8, 14, 19 and 22, Applicants essentially argued, at pages 44-45, that “the software described in Fletcher does not have a relationship with any element that is equivalent with the update services of an application service provision runtime library in claim 1.”

In response to this argument, the Examiner notes that in light of the discussion in paragraph 9 above, the two claim elements of claims 1, 8, 14, 19 and 22 are interpreted to read on the two following elements disclosed in 5:53-61 of Fletcher:

“... generating an agent update request if the agent needs said newest level of said software component; and

updating the agent with said newest version level of said software component in response to said update request.”

In light of the foregoing discussion, the Examiner maintains that claims 1, 8, 14, 19 and 22 are not clearly patentable over Fletcher under 35 U.S.C. § 112, second paragraph and under 35 U.S.C. § 102(b).

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,009,274 to Fltscher et al. (“Fletcher”).

### **Claim 1**

Fletcher discloses at least:

*receiving, by a first update service of a first version of said application service provision runtime library, a request to update an application to a second later version of the runtime library (see at least 5:53 – 6:49); and*

*a second update service of said second later version of the runtime library upgrading said application to said second later version of the runtime library (see at least 5:53 – 6:49).*

**Claim 8**

Fletcher discloses an apparatus comprising a storage medium having stored thereon programming instructions and at least one processor for performing at least the following:

*receive notification, from a first update service of a first version of an application service provision runtime library of an application requesting update to a second later version of the application service provision runtime library (see at least 5:53 – 6:49); and*

*notify a second update service of said second later version of the application service provision runtime library of said request (see at least 5:53 – 6:49).*

**Claim 14**

Claim 14 recites an apparatus comprising the same storage medium and processor for performing the same method steps of claim 8. Therefore the same rejection is applied.

**Claim 19**

Fletcher disclose at least an apparatus comprising a storage medium having stored thereon programming instructions and at least one processor for performing at least the following:

*a first update service to receive a notification, from a selected one of a second update service of a predecessor version of said first version of the runtime library to update an application to said first version of the runtime library, and a dispatcher of the apparatus to update said application to said first version of the runtime library (see at least 5:53 – 6:49);*

*to update, in response to the notification, said application to said first version of the runtime library (see at least 5:53 – 6:49); and*

*notify the selected one of said second update service and said dispatcher of completion of said update of said application to said first version of the runtime library (see at least 5:53 – 6:49).*

### **Claim 22**

Claim 22 recites an apparatus comprising a storage medium having stored thereon programming instructions and at least one processor for performing the same method steps of claim 19. Therefore the same rejection is applied.

### **Claims 2, 9, 15 and 20**

The rejection of base claims 1, 8, 14 and 19 respectively is incorporated. Fletcher further discloses *wherein said second later version of the runtime library is a selected one of the most current version of the runtime library and a predecessor version of the most current version of the runtime library (see at least 5:53 – 6:49).*

### **Claims 3, 10, 16 and 21**

The rejection of base claims 1, 8, 14 and 19 respectively is incorporated. Fletcher further discloses *wherein said second later version of the runtime library is a selected one of an immediate successor version of said first version of the runtime library and a successor version of greater than one generation removed from said first version of the runtime library (see at least 5:53 – 6:49).*

### **Claim 4**

The rejection of base claim 1 is incorporated. Fletcher further discloses:

*said first update service of said first version of said application service provision runtime library notifying a dispatcher of said application service provision*

*apparatus of said update request* (see at least 5:53 – 6:49); and

*said dispatcher notifying said second update service of said second version of said application service provision runtime library of said request* (see at least 5:53 – 6:49).

### **Claim 5**

The rejection of base claim 1 and intervening claim 4 is incorporated. Fletcher further discloses:

*said dispatcher notifying a third update service of an immediate successor version of said first version of the runtime library of said request* (see at least 5:53 – 6:49);

*said third update service of said immediate successor version upgrading said application to said immediate successor version of the first version of the runtime library* (see at least 5:53 – 6:49); and

*said third update service of said immediate successor version notifying said dispatcher of completion upon upgrading said application to said immediate successor version of the first version of the runtime library* (see at least 5:53 – 6:49).

### **Claim 6**

The rejection of base claim 1 and intervening claim 4 is incorporated. Claim 6 recites the same limitations of claim 5 which are applied to a request for *an immediate predecessor version of said second version of the runtime library*. Since the principle of implementing the method steps is the same, the same rejection is applied.

### **Claim 7**

The rejection of base claim 1 and intervening claim 4 is incorporated. Fletcher further discloses:

*said dispatcher notifying said second update service of said second version of said application service provision runtime library of said request directly* (see at least 5:53 – 6:49); and *said second update service upgrading said application to said second version of the runtime library* (see at least 5:53 – 6:49).

**Claim 11**

The rejection of base claim 8 is incorporated. Since claim 11 recites the same limitations of claim 5, the same rejection is applied.

**Claim 12**

The rejection of base claim 8 is incorporated. Since claim 12 recites the same limitations of claim 6, the same rejection is thus applied.

**Claim 13**

The rejection of base claim 8 is incorporated. Since claim 13 recites the same limitations of claim 7, the same rejection is thus applied.

**Claim 17**

The rejection of base claim 14 is incorporated. Since the claim language of claim 17 is unclear and confusing, claim 17 is interpreted to be equivalent to claim 6 and is thus rejected for the same reasons.

**Claim 18**

The rejection of the base claim 19 is incorporated. Since claim 18 recites the same limitations of claim 4 with the only difference being that the notifying step is for

a fourth update service, the same rejection of claim 4 is thus applied to claim 18 because the principle of notifying is the same.

### **Claim 23**

The rejection of the base claim 22 is incorporated. The limitation *said first version of the runtime library is a second predecessor version more than one generation earlier than the most current version of the runtime library* is interpreted to be just another version of the runtime library stored on the update service which is deemed to be inherent to the teaching of Fletcher. Without the availability of different versions, version management is inoperative.

### **Claim 24**

The rejection of the base claim 22 is incorporated. The limitation *said first version of the runtime library is an immediate successor version of said first predecessor version of the runtime library* is interpreted to be just another version of the runtime library stored on the update service, which is deemed to be inherent to the teaching of Fletcher. Without the availability of different versions, version management is inoperative.

### ***Conclusion***

13. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoang-Vu "Antony" Nguyen-Ba whose telephone number is (571) 272-3701. The Examiner can normally be reached on Tuesday-Friday, 7:15 to 17:15.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tuan Dam can be reached at (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**ANTONY NGUYEN-BA  
PRIMARY EXAMINER**

Art Unit 2192

April 12, 2005